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AUTHOR	Baas, Alan
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ABSTRACT

Although it is relatively simple to check on applicants' basic professional competency, ensuring the moral competency of potential school employees is much more difficult. This digest examines major legal issues, district liabilities and responsibilities, suggested guidelines, and information sources involving employee background checks. Of more than 230,000 cases of child abuse in 1984, only about 200 involved school employees. Many lawmakers and educators favor applicant privacy rights, while others point to the potential for harmful behaviors besides child abuse. District size seems a major determinant of schools' screening practices. Whereas smaller districts rely more on references and informal sources, larger systems tend to use bureaucratized procedures and allow employees to start working before all checking is concluded. "Wrongful discharge" is also a major issue. Background checks are subject to twin problems: "saying too much" (risking defamation charges) and "asking too little" (risking a negligent hiring charge). Many states have mandatory FBI checks; some require fingerprint checks of all school applicants. Districts can also check local police records and state registries of known child abusers and must use careful documentation. The American Association of School Administrators and the National Association of State Boards of Education have prepared some helpful guidelines. The Teacher Identification Clearinghouse and a comprehensive handbook, "The Guide to Background Investigation" (Richard Long, 1989) are suggested resources. (Five references) (MLH)

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It's relatively simple to check on the basic professional competency of someone applying to work at your school. Applicants typically come with a trail of credentials, licenses, and employer references. But how do you make sure that your professionally competent teacher or bus driver is also morally competent? School districts differ greatly in how thorough they are in responding to this question (Richard Titus and Carol DeFrances 1989).

What Are the Issues?

Of more than 230,000 cases of child abuse in 1984, just a little more than 200 involved school employees (Sally Banks Zakariya 1988). Given that kind of record, many lawmakers and educators emphasize applicant privacy rights in the investigation of potential employees. The National Education Association, for instance, has a policy asserting "the right to be free from fingerprinting as a condition of employment." Also of high concern is the worry that a person "not be punished twice for the same crime."

Others point to the potential for harmful behaviors in addition to child abuse — for instance, those that might derive from a pattern of drug abuse or inappropriate fiscal management — and argue that no effort can be considered too much when the well-being of children is involved. However individuals stand on this issue, district size appears to be a major determinant of how carefully schools screen employees (Titus and DeFrances). Smaller districts rely more on references and informal sources. Larger systems tend to use bureaucratized procedures, including criminal record checks. These districts are more apt to allow employees to start working before all the checking is concluded and may have more difficulty in detecting and rejecting unsuitable applicants.

On a broader scale, Richard Schromm (telephone interview, July 1990), president-elect of the American Association of School Personnel Administrators and associate superintendent of personnel services, Santa Clara (California) County Office of Education, reports that the issue of "wrongful discharge" — when for any reason you fire someone shortly after hiring them because your initial screening failed — is a major concern of personnel administrators today.

What Are the District's Liabilities?

In a report for the American Society for Personnel Administration, Michael Lotito and Margaret Bryant (1988) sum up the twin problems of background checks: "Say too much, and risk a lawsuit; ask too little, and risk a lawsuit."

If you "say too much" when asked about an employee, you can be liable for defamation, which *Black's Law Dictionary* defines as "the offense of injuring a person's character, fame, or reputation by false and malicious statements." Defamation actions require that "hurtful statements" be "published" to another person — for example, to a prospective employer. Citing legal action taken by employees who were fired for reasons other than those officially listed in their personnel records, Lotito and Bryant urge accuracy in all employee evaluations: "Truth is a complete defense to a charge of defamation."

If you "ask too little" when checking on a person, you can open yourself to a negligent hiring charge. A third party, such as a parent, can sue the district if employees are hired without thorough background checks and then commit a crime of any sort. This issue received attention from a U.S. district court in a Cleveland, Oklahoma, case. The court ruled that the school district had failed to investigate the background of a teacher who was hired with a molestation conviction on his record and then convicted of a second sexual abuse charge while working for the district (David Split 1988).

The case hinged on evidence that a relative of the teacher had telephoned the district to warn that the teacher had "pedophile tendencies." Lawyers for the parents of the boys involved argued successfully that the district "showed a willful disregard or a deliberate indifference" to the students' safety. The district is appealing the case on the basis of the "limited duty of school officials" — Oklahoma has no laws requiring background investigations on persons who otherwise meet the qualifications for the jobs they are seeking.

What Can You Do To Be Careful?

Many states have made FBI checks mandatory for teacher certification. Some, like California, require fingerprint checks of applicants for all school positions. The existence of this requirement, Schromm has found, discourages persons with more serious offenses on their records. If FBI checks are not mandatory, Zakariya recommends checking local police records. The police have the option of initiating FBI checks should they or the school officials have any question. Also check the registries of known child abusers that most states maintain.

Lotito and Bryant offer advice on how to protect against both defamation and negligent hiring: Scrupulously keep copies of supporting documentation and make sure all oral or written statements about former employees relate strictly to work issues. When employees leave, obtain permission to give information to potential employers who may request it. The permission should include a release from all claims that might arise from giving such references.

Route all inquiries to professionals trained in the legal constraints on releasing information. Respond only to requests from persons who have clearly identified who they are and what their needs are for such information.

To protect against hiring negligence, obtain as many references as possible and check them carefully. Document the investigation, including each time you request a reference. Be thorough when interviewing and take complete notes, including explanations from the applicant for all gaps in employment history.

Ask if an applicant "has ever been convicted of a crime." (That information is public record and cannot be construed as invasion of privacy.) Give the applicant a chance to respond in advance to any controversial data that might arise from checking with a former employer. Have applicants sign release forms allowing the district to obtain information from former employers. In those states where employees have access to their own personnel files, ask them to request those files.

In checking references, Schromm suggests "seeking out those not listed as references who might know something about the applicant."

What Are the Key Points To Identify in Policy Statements?

A joint statement by the American Association of School Administrators and the National Association of State Boards of Education offers the following guidelines for dealing with employees and events relating to the sexual abuse of children:

- Each state should routinely check for criminal convictions and review its statutes to clearly identify the authority and procedures relating to complaints and hearings, penalties and prosecution, and issues of rehabilitation and reinstatement.
- Local written policies should apply to all school employees, center on the problem of child abuse, and not be used to regulate employee sexual preferences.
- Clearly explain for parents and students how the reporting and handling of allegations regarding sexual abuse will proceed.
- Define the rights and responsibilities of all parties, including how the school will relate to social services and criminal justice systems.
- Provide for procedural due process to protect employee rights.
- When employees are allowed to resign and no criminal proceedings initiated, records should reflect both the resignation and the circumstances surrounding it. Also, should the employee successfully complete a counseling/ treatment program, that information should also be included in the file.

Where Can You Go for Help?

The Teacher Identification Clearinghouse, maintained by the National Association of State Directors of Teacher Education and Certification (NASDTEC), provides a nationwide database of teachers whose certifications have been denied, revoked, or suspended over the past ten years. States, not individual districts, join the clearinghouse, which distributes a monthly update of the names, known aliases, birth dates, and Social Security numbers of all persons whose certification was withheld by member states. As of July 1990, according to NASDTEC Executive Director Donald Hair (telephone interview, 1990), forty-two states had signed clearinghouse agreements. When someone applies to your district, check with your state offices to find out if that person is listed by the clearinghouse.

If the position is particularly important, consider spending the extra money to use a company specializing in checking credentials. Keep in mind, Zakariya cautions, that such companies legally may be considered your agents. For positions with financial responsibility, run consumer credit checks on applicants.

If you have to do all your own checking, a comprehensive handbook, *The Guide to Background Investigations* (Richard Long 1989), outlines the procedures for obtaining criminal, court, workers' compensation, education, and driving records. Published by the National Employment Screening Services (NESS), the guide describes how to go about checking records and gives each state's policies regarding information access. Details include the procedures, contacts, telephone and fax machine numbers, costs, and turnaround times for each type of record checking. State cross-reference listings let you backtrack from a city to the county that controls its criminal records.

RESOURCES

American Association of School Administrators and National Association of State Boards of Education. "Sexual Abuse of Children. A Joint Statement." No date.

Long, Richard. THE GUIDE TO BACKGROUND INVESTIGATIONS. National Employment Screening Services, Inc., 1989. (Address: 8801 S. Yale, Tulsa, OK 74137-3575. Single issue, $95.00. Telephone 918-491-9936.)

Lotito, Michael J., and Margaret R. Bryant. "Reference Checking: Are the Professional's Hands Tied?" HUMAN RESOURCE MANAGEMENT LEGAL REPORT. American Society for Personnel Administration, Spring 1988. (Address: ASPA, 606 N. Washington St., Alexandria, VA 22314. 800-255-2772.)

Split, David A. "School Law: Background Checks." THE EXECUTIVE EDUCATOR 10, 3 (March 1988): 12. EJ 367 366.

Titus, Richard M., and Carol J. DeFrances. "Criminal Record Checks of Public School Employment Applicants." September 1989. 29 pages. ED 311 545.

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College of Education, University of Oregon
Eugene, Oregon 97403

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